

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-11 Post-employment restriction

SEC rendered advice to the former Director of Tourism for the Department of Commerce as to the activities in which she could engage in the her new position with a company that had subcontracted Tourism contracts while she was employed with the State.

92-I-7 Post-Employment Restriction

(Decision April 16, 1992)

FACT SITUATION

The former Director of Tourism of the Indiana Department of Commerce was employed with Strategic Marketing and Research, Inc. (Strategic), a company that had been a subcontractor under Tourism contracts during the time the former employee was the Director of Tourism. As head of Tourism, the Director guided planning for tourism development in Indiana and the development of a Market Indiana Plan, a plan to promote Indiana to businesses. Much of the work of Tourism was handled through contracts with advertising agencies and subcontracts with companies, one of which was Strategic.

Tourism performed a survey of local Convention and Visitors Bureau (CVB), to find out what their research needs were and how Tourism could help develop a program that would answer those needs. The survey, done by an Indiana University professor, determined a research system that would allow the CVBs to perform a number of different functions was needed. After talking with several groups over a two to three year period, the Director determined the cost of developing the necessary programs was very high. While Tourism was working with Strategic on other projects, the Director asked Strategic to prepare a proposal for developing the needed program. Strategic came back with a proposal whose costs were very reasonable. The Director went to the Association of Convention and Visitors Bureaus and told them there was a pilot program available, but the state did not have the money for the program. If the bureaus were interested, the Director offered to have Strategic talk to them about the program. The Director then arranged for Strategic to go to various meetings with CVBs to talk about developing the program. Seven CVBs each paid \$5,000 to participate in the pilot program. Two of the CVBs applied for grants from the Division of Tourism and received one-half of the cost of the pilot program. The others paid the full amount without receiving grants from Tourism. Any additional CVBs who decide to purchase the program later have the option of applying for state funds. The Director, in working for Strategic, wanted to participate in the development of the software to be used by the CVBs.

Additionally, Strategic was involved in several projects as a subcontractor under Commerce contracts with its two lead advertising agencies during the time the Director was with Tourism. Although the Director clearly cannot represent or assist Strategic concerning these projects, if any disputes arise, there might be circumstances where Commerce employees would be requesting information, clarification, or background on the projects.

Although there were no pending contracts or subcontracts involving Tourism and Strategic, Strategic desired to bid on future contracts and subcontracts.

Finally, the Department of Commerce had worked with the Department of Natural Resources and the Department of Education on a project called Indiana Timetravel that encourages parents to travel with their children to sites of historical importance. The project is designed to give information to fourth grade students studying Indiana history which would encourage them to visit the actual sites they are studying. A companion guide would encourage parents to take their children to visit these places. The state does not have the funding to support this project. The coordinators are now considering establishing a nonprofit corporation to continue the project. The former Director had been approached to serve as an incorporator and Director for no pay.

While other personnel in Tourism worked on this project, the former Director had little personal involvement.

QUESTIONS

Is the former Director of the Division of Tourism, Indiana Department of Commerce, permitted to 1) work on a computerized research system being developed by the Director's new employer that was begun while the former employee was the Director of Tourism and for which the former employee provided information to the Convention and Visitors Bureaus regarding the project, 2) answer Commerce employee's questions of information for clarification or background on projects conducted by Strategic under contract or subcontract with Commerce during the time when the former employee was Director of Tourism; 3) work on future contracts or subcontracts of the company with Tourism which are issued pursuant to a plan for tourism development in Indiana and a Market Indiana Plan, plans which the former employee guided the development of while Director of Tourism; and 4) serve as an incorporator and director of Indiana Timetravel, a nonprofit corporation and outgrowth of the project which the Department of Commerce, the Department of Natural Resources, and the Department of Education had worked on.

OPINION

The Commission found the former Director of the Division of Tourism:

1) Is prohibited by the post-employment restriction for twelve months after leaving state service from working on a computerized research system being developed by her new employer that was begun while the former employee was Director of Tourism for which the former employee provided information to the Convention and Visitors Bureaus regarding the project, unless a waiver is granted by the appointing authority of the Department of Commerce pursuant to IC 4-2-6-11(e).

2) Is permitted to answer Commerce employee's questions of information for clarification or background on projects conducted by Strategic under contract or subcontract with Commerce during the time when the former employee was Director of Tourism.

3) Is prohibited by the post-employment restriction for twelve months after leaving state service from working on future contracts or subcontracts of the company with Tourism which are issued pursuant to a plan for tourism development in Indiana and a Market Indiana Plan, plans which the former employee guided the development of while Director of Tourism, unless a waiver is granted by the appointing authority of the Department of Commerce pursuant to IC 4-2-6-11(e). (The post-employment restriction does not prohibit Strategic from bidding on contracts involving Tourism as long as the former Director of Tourism is not involved in the bidding.)

4) Is permitted to serve as unpaid incorporator and Director of Indiana Timetravel, a nonprofit corporation, which is the outgrowth of a project of the Department of Commerce, the Department of Natural Resources, and the Department of Education, but with which the former Director was not personally and substantially involved while at the Department of Commerce.

The relevant statute is as follows:

IC 4-2-6-11, on post-employment restriction provides, "(a) This section applies only:

- (1) to a former state officer or former employee; and
- (2) during the period that is twelve (12) months after the date the former state officer or former employee had responsibility for the

particular matter.

(b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2.1-3-1.

(c) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;

- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(d) A former state officer or former employee may not represent or assist a person regarding a particular matter involving a specific party or parties:

- (1) that was under consideration by the agency that was served by the state officer or employee; and
- (2) in which the officer or employee participated personally and substantially through:
 - (A) a decision;
 - (B) an approval;
 - (C) a disapproval;
 - (D) a recommendation;
 - (E) giving advice;
 - (F) an investigation; or
 - (G) the substantial exercise of administrative discretion.

(e) An appointing authority or state officer of the agency that was served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency."